

Current Issues Concerning Criminal Justice in Japan

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1. The current state of hostage justice

Let me begin with a recognition of the current situation regarding hostage justice. In considering this issue, the years 2010 and 2011 are extremely important. In both years, there were acquittals in the Ashikaga case and the Fukawa case, as well as the acquittal of Mrs. Muraki of the Ministry of Health, Labor, and Welfare (MHLW). In the process of Muraki case, a falsification of floppy disk data by a special prosecutor, Mr. Maeda of Osaka Special Prosecutor's Office was found and it became Physical Evidence Falsification Case by Osaka Special Prosecutor's Office. The shock of these acquittals was so great that, for the first time in history, Japanese society began to suspect that something terrible was going on in Japan's criminal justice system. Before that, most Japanese neither know the difference between prosecutors and policemen, nor understand why prosecutors existed separately from the police. (This we still don't fully understand.)

The Ashikaga, Fukawa, and Muraki's three successional acquittals in 2010–2011 had a huge impact to Japanese society. Whereas the number of requests for retrial was only about 100 cases per year before the cases, it has skyrocketed to 200–300 cases per year since then. Before then, hostage justice was an exceptional case rarely appeared in the media, but after the cases, the issue of false convictions has become a regular topic in the mass media. The term "hostage justice" has finally gained social recognition.

In this context, the start of the retrial in the Hakamada case was finalized in March of this year. The horror of this case is that the court has pointed out that the investigative authorities falsified conclusive physical evidence by hiding five pieces of clothing allegedly used in the crime in a miso barrel. Although it has become socially accepted knowledge that the affidavits are the composition of the prosecutors, most Japanese people still believed that "Japanese investigative agencies would never

falsify evidence to fabricate a criminal”. We may be witnessing the collapse of the last bastion of public confidence in Japanese criminal justice system.

The Hakamada case shall be retried and acquitted by the end of this year, and the actual state of criminal justice in the Hakamada case will be revealed as the retrial progresses. As the reality of the current judicial system is clarified, we expect that the special appeal by the public prosecutor against the decision to initiate a retrial in the Hinomachi case will also be dismissed.

What is unique about the Hinomachi case is that an ordinary citizen, not a delinquent, was framed by the investigating authorities as a robber and murderer, and was found guilty by the criminal justice system and died in prison. The social impact of the acquittal of the retrial is likely to be huge. And beyond that, there is the acquittal of the Iizuka case. In this case, the state has executed an innocent man, Kuma Michitoshi. Faced with this reality, whether Japanese society will still hesitate to reform the judiciary will be a test of Japanese democracy.

By the way, the prosecutor’s decision to prove guilt in the retrial court of the Hakamada case has had a major social impact in Japan. As a result, Mr. Hakamada’s acquittal in the retrial has been further delayed. We are appalled that the Japanese prosecutors are still willing to conceal the fact under the investigation at this late stage, but as a result, the Japanese prosecutors have completely lost the support of the public. Without the support of the public, prosecutors have no meaning in society, and the Japanese Special Prosecutor’s Office, in particular, has already lost its historical value.

2. Illusion of Japan’s superior judicial system

Japan’s criminal justice is a hostage justice system, in which bail is not granted as a matter of course, confessions are coerced through secret interrogations, and convictions continue to be handed down at an abnormally high rate of 99.9%. On the other hand, the reality is that Japan’s criminal justice system is highly regarded internationally for its excellence. How should we understand this discrepancy?

The high evaluation of Japan’s criminal justice system is based on the overwhelmingly high crime recognition, arrest, and prosecution conviction rates, which are due in part

to Japan's public safety, physical cleanliness as a country, the kindness of the Japanese people, social safety, orderliness in trials, and the tranquility of its prisons. The Japanese criminal justice system is not evaluated in terms of its investigative methods, the evaluation of evidence during interrogations or trials, or the formation of the judge's opinion. Japan's criminal justice system may be excellent and internationally acclaimed, but this is a result of the Japanese people's affinity for maintaining public order, not because of its institutional or operational excellence.

The Japanese have a strong culture that considers lying to be shameful, and it is a Japanese value that lying is forbidden, no matter how cornered the situation may be. In contrast, in Western countries where many people of different ethnic groups live, lying is a necessity for survival, and there is a common sense in society that "not lying when cornered is the act of a fool who has abandoned self-preservation". Japan does not have this as a national experience.

In Japan, more than 100 million Japanese people of one ethnicity, one language, and one set of values live together to form a single society, where lying is considered shameful, and the people are surprisingly obedient to the state power. If a crime is committed in such a society, the society immediately provides the authorities with information about the crime, while there is nowhere for the perpetrator to escape to in Japan. In other words, in Japan, no matter how incompetent the investigative authorities or the judiciary may be, criminals are brought to book and a certain level of public safety is maintained. Moreover, due to an extreme obedience of Japanese people to state power, once a suspect is arrested, he or she will willingly confess to the crime regardless of the actual commitment. Because hostage justice is practiced in such a social structure that overwhelmingly favors the investigative authorities, the inhuman high conviction rate of 99.9% could be realized in the judicial system operated by the human being. The Japanese investigative authorities and prosecutors should not mistake this for the excellence of the Japanese criminal justice system.

Japanese people live under the illusion of a super safe nation with a 99.9% conviction rate on indictment, but until now, Japanese society has never realized how much social capital is sacrificed for a 99.9% conviction rate. Whereas the hostage justice is a social cost with a 99.9% conviction rate, it is irrelevant to most Japanese, and no matter how many times the ugly damage of the hostage justice is reported, this has not generated social sympathy and momentum for judicial reform. The Iizuka case, however, is

different. If the Iizuka case is acquitted in a retrial, as has happened in the Hakamada case, or as will happen in the Hinomachi case, and the Osaki case, the impact of this case will shake Japanese society to its core.

The threat of the Iizuka case lies in the fact that in the heinous rape and murder of two children, the judge arrested Kuma Michitoshi, a neighbor with an evil-looking and bad attitude, and in the absence of any direct evidence to convict him, used an emotional reasoning based only on circumstantial evidence, and convicted based on the judge's prejudgment-ridden liberal mind-set and executed him. Although it is true that Kuma was awfully suspicious, there is no evidence of guilt beyond a reasonable doubt, and therefore, he should have been found not guilty no matter how suspicious he might be.

The society was frightened by the heinous crime and pressed the police to catch the culprit at once, the police spread information about Kuma's vicious nature, the media reported it as it was, the judge wrote the death sentence based on circumstantial evidence. The Justice Minister signed the execution order without hesitation and carried it out. This is not acceptable in the judicial common sense of "suspicion goes unpunished". It is the wisdom of humankind that "if you do something like this, it will lead to terrible consequences, so you must never do it". Ignoring this, the Japanese society executed the innocent man.

As a result, in 2021, 30 years after the incident, the eyewitness testimony of the real culprit (Kimura's testimony) came to light. The authenticity of this eyewitness testimony shattered the conviction of this case from the bottom up. The police officers who arrested Kuma, the prosecutors who prosecuted him, the judges who continued to impose the death sentence, and the major media outlets that have been reporting the guilty verdict must all continue to agonize over the endless remorse of their consciences. The court would like to dismiss this request for a retrial in secret, but it shall never happen as we all know the case in detail. Now that this has happened, we must put our dignity as a Japanese people on the line and move history forward toward a complete review of Japan's criminal justice system, including the abolition of the death penalty.

3. hostage justice and economic cases

Currently in Japan, there is a strong trend of acquittals in retrial cases: Hakamada case, Hinomachi case, and Iizuka case, all of which are murder cases, and none of which are economic cases. As you may have noticed, there are two types of false accusation support activities in Japan: murder cases and economic cases, and there is basically no interaction between the two. In the homicide cases, support groups often erect a woven flag and loudly denounce the wrongful convictions, while supporters of the economic cases view such an activity with a cold eye.

Hostage justice has been discussed mainly in economic cases due to the international fame of the Nissan Ghosn case, but the issue of hostage justice is no different in homicide cases. However, hostage justice in economic cases has a much different meaning than in homicide cases.

In the murder cases, the confession of the suspect by the hostage justice becomes a false accusation that results in the death penalty or life imprisonment, and the case becomes a major social case and the target of false accusation support by the Japan Federation of Bar Associations. The victim of a false accusation is sentenced to life imprisonment or death, and the damage to the victim and his or her family is devastating.

In economic cases, the structure of the hostage justice system is the same. Here the confessions made in the hostage justice lead to false convictions too. But in this case, the prison term is relatively shorter and the sentence is almost always suspended because it is the suspect's first offense, which, all together, does not attract public sympathy. Regarding the professional fees payable to the defense lawyers, it normally cost more than 30 million yen if the case is trialed up to the supreme court. In murder cases, the suspects cannot afford to pay such fees and are not paying them actually, whereas most of the suspects in economic cases are paying them. In such a situation, many people do not sympathize them, claiming they are the cases of rich people. This is the main reason why it is difficult for false accusation support in economic cases to have a social dimension.

Generally speaking, the economic crimes are much lightly punished than the murder cases. This does not mean that the social damage on false accusation of economic crimes is lighter than the one of murder case. It is important to note that false accusations in homicide cases are attributed to the individual victim and his/her family,

whereas false accusations in economic cases affect the entire economy and society more than the individual victim.

In Japan, economic cases are almost exclusively handled by special prosecutors, and as the conviction rate for prosecution in Japan is 99.9%, the arrest of a suspect by special prosecutors in an economic case is actually an indictment, which really means guilty. In Japan, as there have been several acquittals in retrial cases, there must be a huge number of false convictions hidden behind these cases, not to mention the Heinrich's Principles. Since there are so many false accusations even in murder cases with physical evidence and eyewitness testimony, it is no exaggeration to say that economic cases are full of false accusations as there are no physical evidences in economic cases by nature.

During the past 20 years since the special prosecutors have focused on economic cases, the entrepreneurs who have been exposed to hostage justice and socially eliminated by the system have been venture entrepreneurs such as Holliemon and Murakami Fund, foreigners such as Nissan Ghosn or foreigners-like professional accountant with black eyes like myself, and hardly any businessman-managers of traditional Japanese companies. Since these false accusation victims are all people who have a high potential to destroy established concepts and create new economic value, it seems to me that the greatest social cost of hostage justice in economic cases is the economic human resources lost through hostage justice.

Business people take risks in conducting their business under their own responsibility in non-intervention principles to private business by public authorities. They cannot conduct proper business if they are afraid that the special prosecutors might intervene at any moment in the course of their business and take confessions of the persons involved and frame them as criminals. Isn't this kind of potential fear the concern that the international community has about the current Japanese economy?

As a result of the Nissan Ghosn case, the world has witnessed the threat of hostage justice inherent in Japanese business. With a weak yen and low interest rates, Japan stands as an attractive market, safe and full of quality capital and labor, but direct foreign investment in such a Japanese market has been weak, although indirect foreign investment has increased. International capital has fled Hong Kong, which has been rocked by human rights issues, but it has fled to Singapore, not Tokyo. Singapore does

not have an opaque hostage justice system. Tokyo is infested with a hostage justice system run by special prosecutors, and it is hardly a decent business environment for foreign businessmen. Isn't one of the major causes of the stagnant Japanese economy the hostage justice inherent in the Japanese economy?

Until now, the business community has been indifferent to the hostage justice by the Special Prosecutor's Office, saying, "There is no God who does not touch me," and the Japanese economy has been sinking. The threat of hostage justice affects individual victims in murder cases and the Japanese economy as a whole in economic cases. It is time for the Keidanren and the rest of the business community to address the threat of hostage justice.

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